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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
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11 SAMUEL WYNN,

12 Plaintiff,

13 v.

14 B. MOSS, et al.,

15 Defendants.  
16

No. 2:21-CV-1317-KJM-DMC-P

ORDER

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to  
18 42 U.S.C. § 1983.

19 On January 22, 2024, a notice regarding the death of Plaintiff was filed on the  
20 docket by Diana Akins, Plaintiff's mother. See ECF No. 44. Pursuant to Federal Rule of Civil  
21 Procedure 25(a)(1), when a party dies and the claims of that party are not extinguished, the Court  
22 may order substitution of a proper party on motion made within 90 days after service of a  
23 statement noting the death of the party. See Fed. R. Civ. P. 25(a)(1). If a motion to substitute is  
24 not filed within 90 days, the Court must dismiss the action. See id. The Clerk of the Court will  
25 be directed to serve a copy of this order on Ms. Akins. If a motion to substitute is not filed within  
26 90 days of the date of this order, the Court will recommend dismissal of this action pursuant to  
27 Rule 25(a)(1).

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Accordingly, IT IS HEREBY ORDERED as follows:

1. In order to continue with this action, Plaintiff's next of kin, Diana Akins, or another proper party, shall file a motion to substitute within 90 days of the date of this order.

2. Pending a motion to substitute filed by a proper party, Defendants' renewed and unopposed motion to compel, ECF No. 40, is DENIED without prejudice to renewal should this matter continue with a substituted plaintiff.

3. The Clerk of the Court is directed to serve a copy of this order along with the docket sheet for this action on Diana Akins, 705 Stoneman Ave., #102, Pittsburg, California 94565.

Dated: January 25, 2024



DENNIS M. COTA  
UNITED STATES MAGISTRATE JUDGE